IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1438 OF 2007

The State of Maharahtra & Ors... .....
Petitioners
V/s
Ramchandra Mahadev Pawar..... .....
Respondent.

Mr.S.K.Chincholikar, AGP for the petitioners.

Mr.M.A.Kulkarni, Adv. For the respondent.

CORAM: A.P. DESHPANDE, J.
11.4.2007

PC:

Rule

Rule made returnable forthwith. Taken up for final hearing by consent of both the parties.

By filing the instant petition the petitioner takes exception to the judgment and order passed by the Member, Industrial Court dated 28.11.2006 passed in ULP Revision No.82/2000. Few facts that are necessary to decide the dispute are narrated herein below.

2. The respondent is the original complainant before the Labour Court who filed a complaint under section 28, r/w items 1(a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. The respondent had contended that he was project affected person as his land was acquired by the Government for

the petitioner's project and hence the complainant was granted an appointment as Chowkidar temporarily with effect from 3.7.1990 on daily wages basis. Admittedly the complainant worked till 10.6.93 without any interruption. With effect from 12.6.1993 the petitioner terminated the service of the respondent and upon intervention of Government Labour Officer through conciliation proceedings the respondent was again absorbed in service from 3.5.1994. By a letter dated 27.6.1994 the respondent was terminated from service on the ground that on completion of the project no work was available for him to be offered. Aggrieved by the said termination the respondent filed a ULP complaint before the Labour Court. The Labour Court did not find the present petitioner guilty of any unfair labour practice and hence the complaint came to be rejected. Aggrieved by the judgment and order passed by the Labour Court respondent filed revision before the Industrial Court under section 44 of the Act. The Industrial Court reached to a conclusion that the termination of the respondent was not legal and proper in as much as the same was not in adherence with Kalelkar Award which is applicable to the petitioner-department. The Industrial Court held that the Labour Court has committed an error in holding that the complainant was offered retrenchment compensation but he did not accept the same. The Industrial Court has observed that the retrenchment compensation was offered after termination and thus there was noncompliance of section 25F. After having concluded that the respondent had completed 240 days of service in 12 calender months preceding the date of termination the Industrial Court has held that the provisions of Industrial Disputes Act

meaning thereby section 25F and Kalelkar Award was breached. Though the Industrial Court found that the termination is illegal, it has not granted reinstatement for the obvious reasons that the project was completed and no work was available for the respondent. The only point that Industrial Court was to determine is about the amount of compensation to be paid to the respondent herein. Dealing with the said issue the Industrial Court has placed reliance on a judgment of the Supreme Court in the case of ***O.P.Bhandari*** v. ***Indian Tourism Development Corporation***, reported in 1986 (4) SCC 337. The said judgment deals with as to which criteria be followed while determining the amount of compensation. In the facts of that case the Supreme Court has held that the compensation equivalent to 3.33 years salary including usual allowances is proper quantum to be awarded when a period of more than 8 years is left for the employee to reach the age of superannuation. In the present case as well the said fact situation prevails. The Industrial Court has calculated the amount for 3.33 years salary in the sum of Rs.64,735/- but has proceeded to grant compensation of Rs.2 lacs probably for the reason that the proceedings were pending for last 10 years and five months. The period of pendency of the proceedings has no relevance having regard to the judgment of the Supreme Court referred to herein above. The learned counsel for the petitioner-State has stated that the Industrial Court has granted exorbitant amount of compensation, having regard to the fact that the respondent has hardly worked with the petitioner for three years. Per contra learned counsel for the respondent submits that in the judgment of the Supreme Court the employee was directed to be paid

and was entitled to other retirement benefits whereas there is no such entitlement to the present respondent. Hence it is contended that this Court ought not interfere with the quantum of compensation.

3. In my opinion, as the Industrial Court has proceeded to follow the criteria laid down by the Supreme Court in O.P.Bhandari's case (supra) compensation for a period of 3.33 years would have been appropriate. However taking into consideration the fact that the respondent was project affected person as his land was acquired by the petitioner coupled with the fact that the respondent is not entitled to any other retirement benefit which the employee in O.P.Bhandari's case was entitled, ends of justice would be met by quantified the amount of compensation in the sum ofRs.1,00,000/-. For the reasons set out herein above , the impugned order passed by the Industrial Court dated 28.11.2006 needs to be modified by reducing the lump sum compensation amount of Rs.2,00,000/- to Rs.1,00,000/- in lieu of relief of reinstatement. Rule made absolute in above terms with no order as to costs.